U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 22 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Michael Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City (Ciudad Juarez), Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a lawful permanent resident and has a U.S. citizen son. She seeks a waiver of inadmissibility in order to reside in the United States with her husband and child.

In a decision dated January 23, 2007, the district director found that the applicant failed to establish extreme hardship to her qualifying relative as a result of her inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO dated February 21, 2007, counsel states that the district director erred as a matter of law, fact, and discretion in denying the applicant's waiver. Counsel states that the applicant will be submitting previously undiscoverable evidence within thirty days.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record indicates that the applicant entered the United States without inspection in 1994. The applicant remained in the United States until July 1999. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted until July 1999. Thus, the applicant was found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of her departure. It has now been more than ten years since the departure that made the inadmissibility issue arise in the applicant's immigrant visa application. A clear reading of the law reveals that the applicant is no longer inadmissible. The applicant no longer

requires a waiver of inadmissibility. Thus, the applicant's appeal will be dismissed, the decision of the district director will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the application for waiver of inadmissibility is declared moot.